

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

MAY 01 2002

UNITED STATES OF AMERICA,

Plaintiff,

v.

3D SYSTEMS CORPORATION and
DTM CORPORATION,

Defendants.

Civil No: 1:01CV01237 (GK)

NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

Filed:

Entered: April 17, 2002

FINAL JUDGMENT

WHEREAS, plaintiff, United States of America, filed its Complaint on June 6, 2001, plaintiff and defendants, 3D Systems Corporation ("3D") and DTM Corporation ("DTM"), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

AND WHEREAS, defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by the defendants to assure that competition is not substantially lessened;

AND WHEREAS, plaintiff requires defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

AND WHEREAS, defendants have represented to the United States that the divestitures required below can and will be made and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

NOW THEREFORE, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is ORDERED, ADJUDGED AND DECREED:

I. Jurisdiction

This Court has jurisdiction over the subject matter of and, for purposes of this case only, each of the parties to this action. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

II. Definitions

As used in this Final Judgment:

A. "Acquirer" means the entity to whom defendants divest the Divestiture Assets.

B. "3D" means defendant 3D Systems Corporation, a Delaware corporation with its headquarters in Valencia, California, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, including 3D Systems, Inc., and their directors, officers, managers, agents, and employees.

C. "DTM" means defendant DTM Corporation, a Texas corporation with its headquarters in Austin, Texas, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

D. "Defendants" means, collectively or individually as the context requires, DTM and/or 3D.

E. "Divestiture Assets" means (1) a perpetual, assignable, transferable, fully paid-up (except as permitted by Section IV(E) below), non-exclusive license (without the right to sublicense, except for establishing distribution and contracting out manufacturing) under the RP Patents to develop, test, produce, market, sell, or distribute, or to supply any support or maintenance services for, products for use only in the field of either (but not both) the SL Technology or the LS Technology, which technology shall be the technology currently used by the Acquirer to manufacture RP Industrial Equipment (the "Selected Technology"); and (2) the RP Assets.

F. "North America" means Canada, Mexico and the United States.

G. "RP Assets" means (1) a list of all North American purchasers of RP Industrial Equipment from 3D, if the Selected Technology is SL Technology, or from DTM, if the Selected Technology is LS Technology; (2) all software copyright licenses needed by Acquirer to purchase and resell both defendants' used RP Industrial Equipment in North America; and (3) at the option of the Acquirer, DTM's plant located at 1611 Headway Circle, Bldg. 1, Austin, Texas ("Plant").

H. "RP Patents" means all North American patents owned by or licensed to defendants (including patents relating to materials and software), as of the date of filing of this Final Judgment, including all subsequent continuations, continuations-in-part, divisions, reexaminations or reissues thereof, if any, as well as any patents that have been applied for as of the date of filing of this Final Judgment but have not been issued covering technology marketed by defendants as of the date of filing of this Final Judgment, specifically including but not limited

to the patents listed in Appendix I and applied for patents listed in Appendix IIA. annexed hereto, but specifically excluding those Inkjet Technology patents listed in Appendix III and applied for Inkjet Technology patents listed in Appendix IV annexed hereto and those licenses granted to 3D and DTM listed in Appendix V annexed hereto.

I. "LS Technology" means technology (other than Inkjet Technology) that uses data to form, by heat, a three-dimensional object, layer-by-layer, from a sinterable powder material.

J. "SL Technology" means technology (other than Inkjet Technology) that uses data to form, by radiation, a three-dimensional object, layer-by-layer, from a liquid, photocurable material.

K. "Inkjet Technology" shall mean and include equipment, systems, supplies, software, processes or other technology utilized in the fabrication of three-dimensional objects from jettable materials.

L. "RP Industrial Equipment" means products or processes incorporating LS Technology or SL Technology, but not the other, and not Inkjet Technology.

M. "Selected Technology" means whichever one of the LS Technology or the SL Technology is currently used by the Acquirer to manufacture RP Industrial Equipment.

III. Applicability

A. This Final Judgment applies to 3D and DTM, as defined above, and all other persons in active concert or participation with either of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. Defendants shall require, as a condition of the sale or other disposition of all or substantially all of their assets or of lesser business units that include the Divestiture Assets, that

the purchaser of the Divestiture Assets agrees to be bound by the provisions of this Final Judgment, provided, however, that defendants need not obtain such an agreement from the Acquirer.

IV. Divestitures

A. Defendants are ordered and directed, within one hundred twenty (120) calendar days after the filing of this Final Judgment, or five (5) days after notice of entry of this Final Judgment by the Court, whichever is later, to divest the Divestiture Assets in a manner consistent with this Final Judgment to an Acquirer acceptable to the United States, in its sole discretion. The United States, in its sole discretion, may agree to extensions of this time period of up to sixty (60) days, and shall notify the Court in such circumstances. Defendants agree to use their best efforts to divest the Divestiture Assets as expeditiously as possible.

B. Defendants shall provide Acquirer with all software copyright licenses needed by Acquirer to purchase and resell defendants' used RP Industrial Equipment in North America, which licenses shall be on terms no less favorable than defendants offer to other purchasers and resellers of their used RP Industrial Equipment.

C. The Acquirer shall be a firm that currently manufactures RP Industrial Equipment in the Selected Technology, and shall be approved by plaintiff in its sole discretion. If plaintiff does not approve a purchaser of the Divestiture Assets under this Final Judgment, any grant by defendants of a license to that purchaser shall not satisfy the requirements of this Judgment.

D. Defendants warrant that they have the authority to convey all intellectual property included in the Divestiture Assets free and clear of any encumbrances, contractual commitments or obligations, except for the licenses granted to 3D and DTM which are identified in Appendix V

annexed hereto.

E. To the extent that any rights to the RP Patents require defendants to sublicense rights from a third party to the Acquirer, such sublicense(s) must either be fully paid-up or granted on terms no less favorable than the terms applicable to defendants. Any sublicense granted pursuant to this Final Judgment must include provisions acceptable to plaintiff that will guard against the monitoring of the Acquirer's sales or production by defendants.

F. Nothing in this Final Judgment shall be construed to require the Acquirer, as a condition of any license granted by defendants pursuant to Sections IV(A) or (B), to extend to the defendants the right to use the Acquirer's improvements to any of the Divestiture Assets.

G. Defendants shall not assert against Acquirer any claims (1) for patent or copyright infringement in North America for products made, sold or used pursuant to the licenses granted in accordance with Section IV(A) and (B) of this Final Judgment; (2) for patent infringement in North America of the patents listed in Appendix V; or (3) that any equipment, systems, supplies, software, processes, or other technology sold by the Acquirer outside of North America prior to filing of this Final Judgment infringes in North America any patent or copyright issued or licensed to defendants in North America prior to the date of filing of this Final Judgment.

H. In accomplishing the divestiture ordered by this Final Judgment, defendants promptly shall make known, by usual and customary means, the availability of the Divestiture Assets. Defendants shall inform any eligible person making inquiry regarding a possible license or purchase of the Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment except those parts filed under seal. Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality

assurances, all information and documents relating to the Divestiture Assets customarily provided in a due diligence process except such information or documents subject to the attorney-client or work-product privileges and except customer lists and information regarding patent applications. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

I. Defendants shall waive any non-compete clause(s) in any employment agreement(s), whether written or oral, with any of defendants' present or former employees that are currently in effect, and shall not include non-compete clauses in any future employment agreements with respect to such present or former employees for a period of two (2) years from the date of filing of this Final Judgment. Defendants shall provide the Acquirer and the United States information relating to the personnel involved in the sales, marketing and manufacturing of RP Industrial Equipment in the Selected Technology to enable the Acquirer to make offers of employment, which does not preclude defendants from seeking to retain such personnel as employees. Defendants will not interfere with any negotiations by the Acquirer to employ any of defendants' present or former employees for a period of two (2) years from the date of filing of this Final Judgment.

J. Defendants shall permit prospective Acquirers of the Divestiture Assets to have reasonable access to personnel and to make inspections of the Divestiture Assets, other than customer lists or patent applications; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

K. Defendants shall warrant to the Acquirer of the Divestiture Assets that each

tangible asset will be operational on the date of sale.

L. Defendants shall not take any action that will impede, jeopardize, or delay in any way the permitting, operation, or divestiture of any of the Divestiture Assets.

M. Defendants shall warrant to the Acquirer of the Divestiture Assets that there are no material defects in the environmental, zoning or other permits pertaining to the operation of any tangible asset, and that following the sale of the Divestiture Assets, defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of any of the tangible Divestiture Assets.

N. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV, or by trustee appointed pursuant to Section V, of this Final Judgment, shall include the entire Divestiture Assets and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Assets can and will be used by the Acquirer as part of a viable, ongoing commercial enterprise engaged in the sale of RP Industrial Equipment in North America, and that the divestiture will remedy the competitive harm alleged in the Complaint. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment,

- (1) shall be made to an Acquirer that, in the United States' sole judgment, has the intent and capability (including the necessary managerial, operational, technical and financial capability) of competing effectively in the business of servicing and selling RP Industrial Equipment in the United States; and
- (2) shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between an Acquirer and defendants give defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

V. Appointment of Sales Trustee

A. If defendants have not divested the Divestiture Assets within the time period specified in Section IV(A), defendants shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestiture of the Divestiture Assets.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Divestiture Assets. The trustee shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Section V (D) of this Final Judgment, the trustee may hire at the cost and expense of defendants any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestiture.

C. Defendants shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by defendants must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI.

D. The trustee shall serve at the cost and expense of defendants, on such terms and conditions as the plaintiff approves, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of

the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to defendants and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount.

E. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and defendants shall develop financial and other information relevant to such business as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information, customer lists and information relating to patent applications. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

F. After its appointment, the trustee shall file monthly reports with the United States and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent such reports contain information that the trustee deems confidential or that would be deemed confidential under Section V(E), such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each

contact with any such person. The trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

G. If the trustee has not accomplished such divestiture within six months after its appointment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. To the extent such reports contain information that the trustee deems confidential or that would be deemed confidential under Section V(E), such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such reports to the plaintiff who shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VI. Notice of Proposed Divestiture

A. Within two (2) business days following execution of a definitive divestiture agreement, defendants or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture required by Section IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from defendants, the proposed Acquirer, any other third party, or the trustee if applicable, additional information concerning the proposed divestiture, the proposed Acquirer, and any other potential Acquirer. Defendants and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from defendants, the proposed Acquirer, any third party, and the trustee, whichever is later, the United States shall provide written notice to defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to defendants' limited right to object to the sale under Section V(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by defendants under Section V(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Financing

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or V of this Final Judgment.

VIII. Preservation of Assets

Until the divestiture required by this Final Judgment has been accomplished:

A. Defendants shall provide sufficient working capital and lines and sources of credit to continue to maintain the Plant as an economically viable facility.

B. Defendants shall not, except as part of a divestiture approved by the United States, remove, sell, lease, assign, transfer, pledge or otherwise dispose of any of the Divestiture Assets.

C. Defendants shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divestiture to an Acquirer acceptable to the United States.

IX. Affidavits

A. Within twenty (20) calendar days of the filing of the proposed Final Judgment in this matter, and every thirty (30) calendar days thereafter until the divestiture has been completed under Section IV or V, defendants shall deliver to the United States an affidavit as to the fact and manner of its compliance with Section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts defendants have taken to solicit buyers for the Divestiture Assets, and to provide required information to prospective purchasers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by defendants, including limitation on information, shall be made within fourteen (14) days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the proposed Final Judgment in this matter, defendants shall deliver to the United States an affidavit that describes in reasonable detail all actions defendants have taken and all steps defendants have implemented on an ongoing basis to comply with Section VIII of this Final Judgment. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestiture has been completed.

X. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants, be permitted:

- (1) access during defendants' office hours to inspect and copy, or at plaintiff's option, to require defendants to provide copies of, all books, ledgers, accounts, records and documents in the possession, custody, or control of defendants, relating to any matters contained in this Final Judgment; and
- (2) to interview, either informally or on the record, defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by defendants.

B. Upon the written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit written reports, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section or Section IX shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except as required by this Court, or in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to the United States, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then the United States shall give defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. No Reacquisition

Defendants may not reacquire any part of the Divestiture Assets during the term of this Final Judgment.

XII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this

Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIII. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten years from the date of its entry.

XIV. Public Interest Determination

Upon consideration of the Competitive Impact Statement the Court concludes that Entry of this Final Judgment is in the public interest.

Date: April 17, 2002

Court approval subject to procedures
of Antitrust Procedures and Penalties
Act, 15 U.S.C. § 16

Gladys Kessler
United States District Judge